

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )

**Revision of the Commission's Rules to  
Ensure Compatibility with Enhanced 911  
Emergency Calling Systems** )

Petition for Limited Waiver )

CC Docket No. 94-102

To: The Wireless Telecommunications Bureau

**REQUEST FOR LIMITED WAIVER**

North Dakota Network Co. ("NDNC"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a limited waiver of the June 30, 2002, deadline by which digital wireless systems must be capable of transmitting 911 calls from Text Telephone Devices ("TTY"). This requirement was imposed by the *Fourth Report and Order* in the above-captioned docket and Section 20.18(c) of the Commission's Rules.<sup>1</sup> In particular, vendor delays have made NDNC's timely compliance with Section 20.18(c) impossible. NDNC therefore requests that it be allowed until December 31, 2002, to test and deploy TTY capability throughout its network.

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<sup>1</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 FCC Rcd 25216 (2000); Section 20.18(c) of the Rules provides that "Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY). 47 C.F.R. § 20.18 (c).

## **I. BACKGROUND**

NDNC is a wholly owned subsidiary of SRT Communications, Inc. ("SRT"), a rural telephone cooperative that provides local exchange telephone and other telecommunications services in the Minot, North Dakota area. NDNC is licensee of Broadband PCS Stations KNLH232 and KNLH234 in the Broadband Personal Communications Service ("PCS"). NDNC uses Nortel's CDMA equipment for its PCS network.

NDNC is committed to complying with Commission requirements regarding TTY, Automatic Location Identification ("ALI") and Communications Assistance for Law Enforcement Act ("CALEA"). However, in order to comply with these government mandates, NDNC must upgrade its system. As the Commission is aware from NDNC's previously-filed TTY Quarterly Reports, due to Nortel Network's ("Nortel") discontinuation of its support of NDNC's current dual-load wireless and wireline traffic switch, NDNC must purchase a second switch and split the traffic from the existing switch. Before NDNC can split the traffic, it must upgrade the system software to LWW007 (the equivalent of wireless MTX 9). Once the switch split is achieved, NDNC must upgrade the system software a second time to wireless load MTX 10. Because of Nortel's decision to no longer support its dual mode switch, NDNC has been put in the unusual circumstance of having to perform a technically complex switch split seamlessly. Nevertheless, NDNC is committed to do this to comply with Commission E911 TTY and ALI and CALEA mandates.

As stated in its April 15, 2002 Quarterly Report, NDNC has completed the first of the two necessary software upgrades and ordered the new switch February 14, 2002. NDNC has not received the new switch from Nortel, and therefore is not yet in a position to install the switch. NDNC has been informed by Nortel that the new switch will be delivered by the end of July,

2002. In addition, in order to accommodate the new switch, NDNC must complete modifications to its physical plant. To this end, NDNC is converting space that is currently used for storage and adding it to the switch room. This conversion requires that a wall between the two rooms be removed, that an additional halon fire protection system be installed and that the current cooling unit be replaced in favor of a larger one that can accommodate the heat generated by the additional switch. However, before the cooling system is replaced, it must be temporarily relocated out of the immediate construction area, but reinstalled so that the room remains cooled. In addition, NDNC has had to install a new, additional electrical service and larger backup generator just to operate and maintain the upgraded cooling system. These issues complicated the mechanical engineering of the project, which led to an unexpected delay in the selection and engagement of the mechanical contractors. Before the mechanical engineer could complete his work, Nortel had to supply certain technical information relative to the amount of heat the two switches would generate.

The facility construction has taken longer to complete than anticipated because NDNC had to wait for the mechanical engineering to be completed before the construction contractor could begin work. Any contractor chosen by NDNC would be subject to stringent requirements designed to protect NDNC's current switch from contamination and failure, as it will remain in operation during the construction. These requirements necessitate that NDNC engage a contractor that is proficient in construction techniques and practices akin to building laboratories and other sterile facilities that require a great deal of expertise. NDNC has signed a contract with a contractor capable of performing the work and the construction is nearly complete.

While NDNC is well on the road to achieving compliance, there are many additional steps it must take. Construction, splitting the switch and the second software upgrade can take

several months to complete. NDNC therefore respectfully requests an additional six months to achieve compliance with the Commission's TTY requirements.

## **II. GOOD CAUSE EXISTS FOR WAIVER OF THE JUNE 30, 2002 DEADLINE**

Good cause exists for the FCC to grant NDNC's request for a limited waiver of the June 30, 2002 TTY compliance deadline.<sup>2</sup> Good cause is shown and waiver of a rule is appropriate if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>3</sup> Similarly, under the Commission’s rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>4</sup> The Commission has consistently concluded that waiver of a regulatory deadline is appropriate when non-compliance “is due to circumstances beyond the licensee’s control.”<sup>5</sup> Moreover, in the context of other Section 20.18 regulations governing deployment of 911 location identification capabilities, the Commission has specifically recognized that “technology-related issues” delaying implementation could warrant grant of a waiver to allow for their resolution.<sup>6</sup>

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<sup>2</sup> The Commission may grant an extension or waiver of a compliance deadline for good cause shown. *See* 47 C.F.R. § 1.3.

<sup>3</sup> Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir 1969).

<sup>4</sup> *See* 47 C.F.R. § 1.925(b)(3).

<sup>5</sup> *E.g.*, Order, McElroy Electronics Corp.; Request for Clarification of Commission Rules Regarding Section 22.911(a) in Relation to Construction of Cellular System for Market No. 15-A2, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

<sup>6</sup> *See* Fourth Memorandum Opinion and Order, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, FCC 00-326, 15 FCC Rcd. 17442, 17459, ¶ 43 (2000) (“In the case of E911, we have recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001, and indicated that

In NDNC's case, special circumstances exist because NDNC requires additional time to complete necessary construction and because Nortel has not been able to provide NDNC with the required switch; therefore, NDNC will not be able to implement and test the technology upgrades prior to the deadline. NDNC has been diligent in requesting equipment delivery from Nortel, but the strain of assisting its customers in complying with regulatory mandates has apparently exhausted Nortel's resources. NDNC is not requesting an open-ended extension, but instead intends to promptly achieve compliance within a reasonable period after the original deadline. Strict enforcement of the TTY compliance deadline in this instance would be inequitable and especially burdensome on a small carrier such as NDNC, because it lacks the resources and market power that larger carriers can use to influence vendor delivery schedules and to participate in technology development and beta testing programs.

Finally, the underlying purpose of Section 20.18(c) – “requiring carriers to achieve TTY/digital compatibility at the earliest possible date”<sup>7</sup> – would be frustrated by strict enforcement of the rule’s June 30, 2002 deadline in NDNC's case. The FCC has suspended and waived the compliance deadline as to digital wireless carriers for more than three years “because the technology did not exist to enable TTY signals to be transmitted over digital wireless systems at the time the rule was originally implemented.”<sup>8</sup> When it became apparent that the wireless industry and representatives of the disability community had developed solutions for nearly all air interfaces, the FCC adopted a two-stage deadline where carriers were to have obtained all software upgrades and equipment necessary for their systems to be capable of transmitting 911

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these cases could be dealt with through individual waivers as these implementation issues are more precisely identified.”).

<sup>7</sup> *Fourth Report and Order* at ¶ 29.

<sup>8</sup> *Id.* at ¶ 7.

calls from TTY devices by December 31, 2001, and “an additional six-month period (until June 30, 2002) to integrate, test, and deploy the technology in their systems in conjunction with the public safety community.”<sup>9</sup> Enforcing a strict deadline against NDNC when the necessary hardware and software upgrades for TTY capability on its network are not available to it would defeat the whole purpose of the rule; NDNC requires the assistance and cooperation of its equipment vendor, Nortel, to achieve compliance. Such assistance and cooperation, while promised, has been slow in coming. NDNC submits that application of the June 30, 2002 deadline to it would be contrary to the public interest and unduly burdensome and respectfully requests an additional six months, until December 31, 2002, to come into compliance with Section 20.18(c) of the Commission's Rules.

NDNC had no reasonable alternative than to wait for Nortel to provide it with a new switch. NDNC's system is completely based on Nortel infrastructure; any alternative TTY solution would require a complete replacement of NDNC's entire system. Such an action would be financially prohibitive and economically wasteful and, in any case, would not be achievable by the June 30, 2002 deadline. NDNC chose the dual switch to serve its rural market because it was more economical at the time than a two-switch system. As a rural operator, NDNC's license area is comparatively sparsely populated; it does not receive a return on its infrastructure development investment as rapidly as non-rural operators. Therefore, when constructing its system, NDNC chose a dual load switch, the most economical alternative. At the time NDNC purchased the switch, it did not envision that Nortel would discontinue its support of the technology a few short years later.

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<sup>9</sup> *Id.* at ¶ 8.

As demonstrated above, NDNC has met the Commission's standards for obtaining the requested waiver of Rule Section 20.18(c). While Section 20.18 of the Commission's Rules imposes TTY obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged that achieving full regulatory compliance requires the cooperative efforts of carriers and equipment manufacturers and suppliers. As a service provider only, NDNC would be unable to achieve compliance with the Commission's TTY requirements without the availability of necessary equipment. NDNC simply does not and will not have the equipment available to it to meet the June 30, 2002 deadline. As a small market carrier, NDNC does not have the buying power of the national carriers and must wait for the equipment requirements of the larger carriers to be satisfied before Nortel will turn its attention to NDNC's requirements and NDNC will be able to complete the upgrade to its system to meet regulatory obligations.

### **III. CONCLUSION**

It is clear that NDNC has been diligent in pursuing compliance with the Commission's TTY requirements, but is unable to meet the requirements due to matters that are utterly beyond

its ability to control. In view of the foregoing, NDNC respectfully submits that the waiver requested herein is in the public interest and respectfully requests that it be granted.

Respectfully submitted,  
North Dakota Network Co .

By 

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